

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7206 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

URVASHI S DIXIT

Versus

CHHOTAUDEPUR NAGARPANCHAYAT

Appearance:

1. Special Civil Application No. 7206 of 1993
MR JITENDRA M PATEL for Petitioner No. 1
RULE SERVED for Respondent No. 1-2,4
MR HL JANI, ASSTT.GOVERNMENT PLEADER for Respondent
Nos. 2 and 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 10/09/2004

ORAL JUDGEMENT

In the present petition, the petitioner has

challenged the Resolution dated 7.7.1993 of the respondent No.1 herein, by which it is resolved that the petitioner should be treated as an untrained teacher pursuant to the communication dated 16.6.1993 of the District Education Officer, since the petitioner had joined the service with qualification of M.A. B.Ed after 1.1.1977.

2. It is not in dispute that the petitioner is possessing the qualification of M.A. B.Ed. It is also not in dispute that she has not done the course of P.T.C. It is also an undisputed fact that the petitioner joined the service after 1.1.1977. The petitioner has, along with further affidavit, produced a certificate dated 28.8.2004, issued by the school in which she is employed, which states inter-alia that the petitioner since her initial appointment has been teaching in Standards VI and VII and currently also she is teaching in the said classes. The petitioner has also produced her service record to demonstrate that she is teaching in Standards VI and VII. There is no denial about these factual averments of the petitioner.

3. The petitioner has raised number of contentions in the petition challenging the said Resolution dated 7.7.1993, including the ground that mere fact that the petitioner joined the services after 1.1.1977 should not disentitle her from claiming the salary as a trained teacher, and any such classification would be arbitrary and discriminatory. The learned Advocate for the petitioner however, confines his challenge to the Resolution on the ground that since the petitioner is teaching in Standards VI and VII only, though she does not possess the P.T.C certificate, and the fact that she has educational qualification of M.A. B.Ed should be sufficient to ensure that the petitioner be treated as a trained teacher and be paid salary accordingly. In support of this contention, learned Advocate for the petitioner places reliance on the Full Bench decision of this Court, rendered in Special Civil Application No. 8075 of 2001 and connected matters, decided on 3.12.2003.

4. Appearing for the respondent Nos. 2 and 3, learned Assistant Government Pleader Shri N.D. Gohil points out the averments made in the affidavit filed by the respondent No.2 and contends that the decision of the authorities is based on the Government Resolution dated 2.9.1985, according to which the primary teachers who joins service after 1.1.1977 would be treated as untrained teachers, if they do not possess the qualification of S.S.C with P.T.C.

5. In view of the uncontroverted factual position that the petitioner is possessing the degree of M.A. B.Ed and that she has been from the very inception teaching in Standards VI and VII, the petitioner would be entitled to the pay-scale of trained teacher, as held by the above mentioned decision of the Full Bench rendered in Special Civil Application No. 8075 of 2001 and cognate matters. In the said decision, the Full Bench has answered the Reference in the following manner:-

"A person holding the degree of Graduate B.Ed is a "trained teacher" for Standards VI and VII, but is not a trained teacher for Standards I to V, with regard to his/her appointment as a primary teacher/Vidhya Sahayak in a Primary School."

6. Considering the above decision of the Full Bench and the factual aspect of the matter, it is clear that the respondent authorities had erred in passing the impugned Resolution dated 7.7.1993 and the decision to treat the petitioner as an untrained teacher is unjust and unlawful. The impugned Resolution dated 7.7.1993 at Annexure "F" is therefore, quashed and set aside. In the result, petition succeeds. Rule is made absolute with no order as to costs.

7. By virtue of this order, if the petitioner is entitled to any arrears of salary and allowances, the same may be paid to the petitioner within a period of two months from the date of receipt of a copy of this order.

(Akil Kureshi, J.)

*/Mohandas